



First State Community Bank

July 22, 2004

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Regulation DD
Docket No. R-1197

Dear Ms. Johnson:

We appreciate the opportunity to comment on the proposed amendments to Regulation DD issued by the Board of Governors of the Federal Reserve System ("Board"). We understand the Board's concern with the practices of some in the financial industry that may have misled consumers with respect to the true nature of discretionary overdraft protection services, and we agree the more appropriate vehicle to address the concerns is Regulation DD rather than Regulation Z.

The proposal states that "bounced-check protection is an *automated* service that is *sometimes* provided to deposit account consumers as a traditional line of credit". The offering of *discretionary* overdraft services is not something new to the financial services industry and is not limited to the institutions offering "bounce protection" type services. It would be accurate to say that all depository institutions have provisions in their transaction account agreements that provide that the depository institution may, in their sole discretion, pay or return a check presented against insufficient funds. This would indicate that virtually all depository institutions engage in the practice of paying discretionary overdrafts employing the same process that has always been utilized, i.e., reviewing account statistics and customer relationships to determine whether to pay or return the item presented against insufficient funds. Because there is little difference between the "overdraft protection programs" and the "traditional, ad hoc, discretionary payment of overdrafts, the final guidance adopted by the Agencies would likely apply to all of the approximately 20,000 depository institutions in the country, not just a subset of institutions with "bounce protection" agreements.

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We do not understand what the Board intends when characterizing overdraft protection services as “automated” services. All depository institutions, whether or not they have contracted with a third-party vendor, have automated at least part of the process related to the handling of items presented against insufficient funds. We feel the presence or absence of “automation” in any part of the process is irrelevant to the issues the Board addresses in the Proposal. While parts of the process may be automated, it does not remove the institution’s ability to use it’s discretion when paying or returning items submitted against insufficient funds. Our institution reviews every account that has items submitted against insufficient funds and uses discretion when deciding to pay or return the items. None of the automated process limits this discretionary ability.

The Proposal refers to the idea that third party vendors have developed and sold automated programs to institutions that is different from in-house systems in that there is marketing plans that promote the generation of fee income by stating dollar limits consumers can access through overdrafts and use the service as a line of credit. This is not true of all third party programs. The Strunk program we utilize assisted us in setting up reporting information that is utilized by management in the discretionary decisions made to pay or return items presented against insufficient funds. It is not used to market the program to our customers. All information associated with this service plainly states this service is at our discretion and does not guarantee the payment of any items presented against insufficient funds. The disclosure of overdraft limits in no way represents a commitment to extend credit, or an enticement to utilize the program. We feel that this item is an important piece of information the consumer should be aware of.

The Board expressed concern that the consumer would not be aware of the total amount of fees and the amount the account is overdrawn until the next periodic statement. We currently notify the account owner via mail each time they have items presented against insufficient funds. Information includes the amount of fees, the amount of each item presented, and the amount they are overdrawn. With this information, the customer knows the amount of fees charges along with their balance in a very timely basis.

The Proposal would require that depository institutions clearly and conspicuously disclose “the circumstances under which the depository institution would not pay an overdraft.” The proposed revision to the Official Staff Commentary on Regulation DD indicates “a general description” would be satisfactory in meeting this guideline. Our concern is that any kind of guideline disclosed could inhibit the institutions ability to use its discretion when deciding which items to pay and which to return.

Thank you for the opportunity to submit our comments on the Proposal to the Board. We would be happy to answer any questions the Board might have regarding our comments.

Respectfully submitted,

Greg Allen
Vice-Chairman

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